

HOUSE BILL No. 1227

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-15; IC 5-10-8.

Synopsis: State teacher retirement; state employee grievances. Requires that appropriations to support the state employees appeals commission be made by a separate line item. Provides an optional arbitration procedure for state employee grievances. Requires the state to provide a group health insurance program to retired state employees who were employed as teachers at certain state institutions and who participated in a state retirement fund: (1) for 15 years; or (2) ten years immediately preceding retirement. Changes the requirements for a retired state employee to participate in a group health insurance plan by: (1) reducing the number of years of creditable employment before the employee's retirement date from 20 to 15; and (2) eliminating the requirement that the employee participate in a retirement plan at least 15 years before the employee's retirement date. Changes the name of the state employees appeals commission to the state employees and educators appeals commission, and gives the commission additional duties. Makes conforming changes.

Effective: July 1, 2006.

Budak, Ayres, Kromkowski

January 10, 2006, read first time and referred to Committee on Employment and Labor.

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Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

HOUSE BILL No. 1227

A BILL FOR AN ACT to amend the Indiana Code concerning education.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 4-15-1.5-0.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2006]: **Sec. 0.5. "Commission" means the**
4 **state employees and educators appeals commission created by**
5 **section 1 of this chapter.**

6 SECTION 2. IC 4-15-1.5-1 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. There is hereby
8 created the state employees **and educators** appeals commission, which
9 shall consist of five (5) members, not more than three (3) of whom
10 shall be adherents of the same political party. One **(1)** of ~~said the~~
11 members shall be appointed for a term of one (1) year, one **(1)** for a
12 term of two (2) years, one ~~of whom~~ **(1)** for a term of three (3) years,
13 **and two (2)** for a term of four (4) years. ~~Every A member so appointed~~
14 shall serve until ~~his the~~ successor ~~shall have been~~ is appointed and
15 qualified. ~~Each A~~ successor shall serve a term of four (4) years. ~~Any A~~
16 vacancy occurring in the membership of the board for any cause shall
17 be filled by appointment of the governor for the unexpired term.



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SECTION 3. IC 4-15-1.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. The members of the commission shall be citizens of the state who are in sympathy with and have knowledge of the practice of professional personnel administration in public employment **or education** with particular appreciation for fairly and impartially determining the validity of employee appeals. No member of the commission shall be a member of any local, state, or national committee of a political party or an officer in any partisan political club or organization, or shall hold or be a candidate for, any elective public office, and upon acceptance of any such appointment or upon any such candidacy, the term of a member of the commission shall expire. Upon the acceptance of any other remunerative appointment to public office, the term of a member shall expire.

SECTION 4. IC 4-15-1.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. **(a)** The commission shall meet in rooms provided by the personnel department and assume the duties of office.

(b) Three (3) members of the commission shall constitute a quorum for the transaction of business, and a majority of votes cast shall be required for the adoption or approval of any official action.

(c) The commission shall elect one (1) of the members as the chairman and another member as vice chairman and the persons so elected shall hold office for one (1) year and until their successors are elected and qualified.

(d) The commission shall:

(1) hold ~~such~~ regular and special meetings each year as it may prescribe by rule or resolution; ~~shall~~

(2) meet on the call of the chairman; and ~~shall~~

(3) hold at least one (1) meeting each month.

~~Such clerical and staff assistance as is needed by the commission shall be provided through the state director of personnel.~~

(e) To ensure the independence of the commission as required by section 8 of this chapter, appropriations to support the operations of the commission must be made by separate line item.

SECTION 5. IC 4-15-1.5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. The ~~appeals~~ commission is hereby authorized and required to do the following:

(1) To hear or investigate those appeals from state employees as is set forth in IC 4-15-2, and fairly and impartially render decisions as to the validity of the appeals or lack thereof. Hearings shall be conducted in accordance with IC 4-21.5. **Final orders of**

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1 **the commission are mandatory and are not appealable except**
 2 **as provided under IC 4-15-2-35.**

3 (2) To make, alter, or repeal rules by a majority vote of its
 4 members for the purpose of conducting the business of the
 5 commission, in accordance with the provisions of IC 4-22-2.

6 (3) To recommend to the personnel director such changes,
 7 additions, or deletions to personnel policy which the ~~appeals~~
 8 commission feels would be beneficial and desirable.

9 **(4) To adopt an official seal and prescribe the purposes for**
 10 **which the seal shall be used.**

11 **(5) To hold hearings and make inquiries as the commission**
 12 **considers necessary to carry out properly its function and**
 13 **powers.**

14 **(6) To meet and exercise its powers at any place in Indiana.**

15 **(7) To conduct a proceeding, a hearing, an investigation, an**
 16 **inquiry, or an election necessary to the performance of the**
 17 **commission's functions at any place in Indiana. The**
 18 **commission may designate one (1) of its members or an agent**
 19 **as a hearing examiner for any purpose of the duties of this**
 20 **subdivision. The commission may use voluntary and**
 21 **uncompensated services as needed.**

22 **(8) To appoint staff and attorneys as necessary for the proper**
 23 **performance of the commission's duties. An attorney**
 24 **appointed under this subdivision may appear for and**
 25 **represent the commission in court at the direction of the**
 26 **commission.**

27 **(9) To pay the reasonable and necessary traveling and other**
 28 **expenses of:**

29 (A) an employee;

30 (B) a member; or

31 (C) an agent;

32 **of the commission.**

33 **(10) To:**

34 (A) issue subpoenas for the:

35 (1) appearance of witnesses; and

36 (2) production of books, papers, records, and documents
 37 that may be needed as evidence;

38 in a matter under inquiry; and

39 (B) administer oaths and affirmations.

40 **In a case of neglect or refusal to obey a subpoena issued to a**
 41 **person, the circuit or superior court of the county in which the**
 42 **investigation or the public hearing is taking place, upon**

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application by the commission, shall issue an order requiring the person to appear before the commission and produce evidence about the matter under investigation. A failure to obey the order may be punished by the court as contempt. A subpoena, a notice of hearing, or another process of the commission shall be served in the manner prescribed by the Indiana Rules of Trial Procedure.

(11) To:

(A) publish; and

(B) report in full;

an opinion in a case decided by the commission.

(12) To issue an interlocutory or final order as considered appropriate in the administration of:

(A) IC 4-15-2-35; and

(B) IC 20-23-16-41.

(13) To issue an annual report to the governor.

(14) To record a proceeding before:

(A) the commission;

(B) an administrative law judge for the commission; or

(C) a hearing examiner for the commission.

SECTION 6. IC 4-15-1.5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 9. (a) Subject to this chapter, the commission shall organize an office, which shall be called the office of the state employees and educators appeals commission. The office is responsible for the administrative operations of the commission.**

(b) The commission shall hire personnel necessary to perform the duties of the commission.

(c) The employees of the commission are covered by IC 4-15-2.

SECTION 7. IC 4-15-1.5-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 10. The commission, through the office organized under section 9 of this chapter, is responsible for the following:**

(1) Compiling the commission's budget.

(2) The fiscal performance of the commission.

(3) Management and administrative duties of the commission.

SECTION 8. IC 4-15-2-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006] : **Sec. 2.5. "Commission"** means the state employees **and educators** appeals commission created by IC 4-15-1.5.

SECTION 9. IC 4-15-2-35, AS AMENDED BY P.L.222-2005, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2006]: Sec. 35. (a) This section does not apply to an employee who has been suspended or terminated by the ethics commission.

(b) Any regular employee may file a complaint if the employee's status of employment is involuntarily changed or if the employee deems conditions of employment to be unsatisfactory. However, the complaint procedure shall be initiated as soon as possible after the occurrence of the act or condition complained of and in no event shall be initiated more than thirty (30) calendar days after the employee is notified of a change in the status of employment or after an unsatisfactory condition of employment is created. Failure to initiate the complaint procedure within this time period shall render the complaint procedure unavailable to the employee. The following complaint procedure shall be followed:

Step I: The complaint procedure shall be initiated by a discussion of the complaint by the employee and the employee's immediate supervisor and, if a mutually satisfactory settlement has not been made within two (2) consecutive working days, the complaint may be referred to Step II.

Step II: The complaint shall be reduced to writing and presented to the intermediate supervisor. If a mutually satisfactory settlement has not been reached within four (4) consecutive working days, ~~such the~~ complaint may then be referred to the appointing authority.

Step III: The appointing authority or the appointing authority's designee shall hold a hearing, if necessary, and conduct whatever investigation the appointing authority or the appointing authority's designee considers necessary to render a decision. The appointing authority or the appointing authority's designee must render a decision in writing not later than ten (10) business days from the date of the hearing, if applicable, or close of the investigation, whichever occurs later.

If the appointing authority or the appointing authority's designee does not find in favor of the employee, the complaint may be submitted within fifteen (15) calendar days to the state personnel director. The director or the director's designee shall review the complaint and render a decision not later than fifteen (15) calendar days after the director or the director's designee receives the complaint. If the decision is not agreeable to the employee, an appeal may be submitted by the employee in writing **either** to the commission **or arbitration** not later than fifteen (15) calendar days from the date the employee has been given notice of the action taken by the personnel director or the director's designee.

Step IV: ~~After submission of the appeal, If an employee elects to~~

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submit the appeal to the commission, the commission shall, prior to rendering its decision, grant the appealing employee and the appointing authority a public hearing, with the right to be represented and to present evidence. With respect to all appeals, the commission shall render its decision within thirty (30) days after the date of the hearing on the appeal. If the commission finds that the action against the employee was taken on the basis of politics, religion, sex, age, race, or because of membership in an employee organization, the employee shall be reinstated without loss of pay. In all other cases, **unless judicial review of the decision is requested in accordance with IC 4-21.5-5**, the appointing authority shall follow the recommendation of the commission, which may include reinstatement and payment of salary or wages lost by the employee, which may be mitigated by any wages the employee earned from other employment during a dismissed or suspended period.

If the recommendation of the commission is not agreeable to the employee, the employee, within fifteen (15) calendar days from receipt of the commission recommendation, may elect to submit the complaint to arbitration. The cost of arbitration shall be shared equally by the employee and the state of Indiana. The commissioner of labor shall prepare a list of three (3) impartial individuals trained in labor relations; and from this list each party shall strike one (1) name. The remaining arbitrator shall consider the issues which were presented to the commission and shall afford the parties a public hearing with the right to be represented and to present evidence. The arbitrator's findings and recommendations shall be binding on both parties and shall immediately be instituted by the commission.

Step V: If an employee elects to submit the appeal to arbitration, an arbitrator must be selected from:

- (1) the American Arbitration Association; or**
- (2) the Federal Mediation and Conciliation Service, if an arbitrator is not available from the American Arbitration Association;**

according to selection procedures established by the arbitrator's association or service. The costs of arbitration under this Step shall be shared equally by the employer and the employee or the employee's representative.

Step VI: The decision of the commission under Step V(1) or the arbitrator under Step V(2) is a final order subject to judicial review in accordance with IC 4-21.5-5. The commission's or arbitrator's decision in Step V is binding unless a party requests judicial review.

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(c) An employee who files a complaint under subsection (b) may choose a representative who is inside or outside the employee's agency or facility to represent the employee during subsection (b) Steps III through VI of the complaint procedure.

(d) If, at a point in the complaint procedure before subsection (b) Step V, the employer does not comply with the timelines set forth in subsection (b), the employee's complaint proceeds to the next Step of the complaint procedure.

SECTION 10. IC 5-10-8-6.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6.5. (a) A member of the general assembly may elect to participate in either:

- (1) the plan of self-insurance established by the state police department under section 6 of this chapter;
- (2) the plan of self-insurance established by the state personnel department under section 7 of this chapter; or
- (3) a prepaid health care delivery plan established under section 7 of this chapter.

(b) A former member of the general assembly who meets the criteria for participation in a group health insurance program provided under ~~section 8(e)~~ **section 8** or 8.1 of this chapter may elect to participate in either:

- (1) the plan of self-insurance established by the state police department under section 6 of this chapter; or
- (2) a group health insurance program provided under ~~section 8(e)~~ **section 8** or 8.1 of this chapter.

(c) A member of the general assembly or former member of the general assembly who chooses a plan described in subsection (a)(1) or (b)(1) shall pay any amount of both the employer and the employee share of the cost of the coverage that exceeds the cost of the coverage under the new traditional plan.

SECTION 11. IC 5-10-8-8, AS AMENDED BY P.L.1-2005, SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) This section applies only to the state and employees who are not covered by a plan established under section 6 of this chapter.

(b) After June 30, 1986, the state shall provide a group health insurance plan to each retired employee:

- (1) whose retirement date is:
 - (A) after June 29, 1986, for a retired employee who was a member of the field examiners' retirement fund;
 - (B) after May 31, 1986, for a retired employee who was a member of the Indiana state teachers' retirement fund; or

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1 (C) after June 30, 1986, for a retired employee not covered by
 2 clause (A) or (B);

3 (2) who will have reached fifty-five (55) years of age on or before
 4 the employee's retirement date but who will not be eligible on that
 5 date for Medicare coverage as prescribed by 42 U.S.C. 1395 et
 6 seq.; **and**

7 (3) who:

8 **(A) for an employee who retires before January 1, 2007,**
 9 **will have completed :**

10 **(i) twenty (20) years of creditable employment with a public**
 11 **employer on or before the employee's retirement date, ten**
 12 **(10) years of which shall have been completed immediately**
 13 **preceding the retirement; and**

14 ~~(4) who will have completed~~ **(ii) at least fifteen (15) years of**
 15 **participation in the retirement plan of which the employee**
 16 **is a member on or before the employee's retirement date; or**

17 **(B) for an employee who retires after December 31, 2006,**
 18 **will have completed fifteen (15) years of creditable**
 19 **employment with a public employer on or before the**
 20 **employee's retirement date, ten (10) years of which shall**
 21 **have been completed immediately preceding the**
 22 **retirement.**

23 (c) The state shall provide a group health insurance program to each
 24 retired employee:

25 (1) who is a retired judge;

26 (2) whose retirement date is after June 30, 1990;

27 (3) who is at least sixty-two (62) years of age;

28 (4) who is not eligible for Medicare coverage as prescribed by 42
 29 U.S.C. 1395 et seq.; and

30 (5) who has at least eight (8) years of service credit as a
 31 participant in the Indiana judges' retirement fund, with at least
 32 eight (8) years of that service credit completed immediately
 33 preceding the judge's retirement.

34 (d) The state shall provide a group health insurance program to each
 35 retired employee:

36 (1) who is a retired participant under the prosecuting attorneys
 37 retirement fund;

38 (2) whose retirement date is after January 1, 1990;

39 (3) who is at least sixty-two (62) years of age;

40 (4) who is not eligible for Medicare coverage as prescribed by 42
 41 U.S.C. 1395 et seq.; and

42 (5) who has at least ten (10) years of service credit as a participant

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in the prosecuting attorneys retirement fund, with at least ten (10) years of that service credit completed immediately preceding the participant's retirement.

(e) The state shall make available a group health insurance program to each former member of the general assembly or surviving spouse of each former member, if the former member:

- (1) is no longer a member of the general assembly;
- (2) is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq. or, in the case of a surviving spouse, the surviving spouse is not eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.; and
- (3) has at least ten (10) years of service credit as a member in the general assembly.

A former member or surviving spouse of a former member who obtains insurance under this section is responsible for paying both the employer and the employee share of the cost of the coverage.

(f) The group health insurance program required under subsections (b) through (e) **and subsection (k)** must be equal to that offered active employees. The retired employee may participate in the group health insurance program if the retired employee pays an amount equal to the employer's and the employee's premium for the group health insurance for an active employee and if the retired employee within ninety (90) days after the employee's retirement date files a written request for insurance coverage with the employer. However, the employer may elect to pay any part of the retired employee's premium with respect to insurance coverage under this chapter.

(g) Except as provided in subsection (j), a retired employee's eligibility to continue insurance under this section ends when the employee becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq., or when the employer terminates the health insurance program. A retired employee who is eligible for insurance coverage under this section may elect to have the employee's spouse covered under the health insurance program at the time the employee retires. If a retired employee's spouse pays the amount the retired employee would have been required to pay for coverage selected by the spouse, the spouse's subsequent eligibility to continue insurance under this section is not affected by the death of the retired employee. The surviving spouse's eligibility ends on the earliest of the following:

- (1) When the spouse becomes eligible for Medicare coverage as prescribed by 42 U.S.C. 1395 et seq.
- (2) When the employer terminates the health insurance program.
- (3) Two (2) years after the date of the employee's death.

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1 (4) The date of the spouse's remarriage.

2 (h) This subsection does not apply to an employee who is entitled
3 to group insurance coverage under IC 20-28-10-2(b). An employee
4 who is on leave without pay is entitled to participate for ninety (90)
5 days in any health insurance program maintained by the employer for
6 active employees if the employee pays an amount equal to the total of
7 the employer's and the employee's premiums for the insurance.

8 (i) An employer may provide group health insurance for retired
9 employees or their spouses not covered by this section and may provide
10 group health insurance that contains provisions more favorable to
11 retired employees and their spouses than required by this section. A
12 public employer may provide group health insurance to an employee
13 who is on leave without pay for a longer period than required by
14 subsection (h).

15 (j) An employer may elect to permit former employees and their
16 spouses, including surviving spouses, to continue to participate in a
17 group health insurance program under this chapter after the former
18 employee (who is otherwise qualified under this chapter to participate
19 in a group insurance program) or spouse has become eligible for
20 Medicare coverage as prescribed by 42 U.S.C. 1395 et seq. An
21 employer who makes an election under this section may require a
22 person who continues coverage under this subsection to participate in
23 a retiree health benefit plan developed under section 8.3 of this chapter.

24 **(k) The state shall provide a group health insurance program to**
25 **each retired employee:**

26 **(1) who was employed as a teacher in a state institution under:**

27 **(A) IC 11-10-5;**

28 **(B) IC 12-24-3;**

29 **(C) IC 16-33-3;**

30 **(D) IC 16-33-4;**

31 **(E) IC 20-21-2-1; or**

32 **(F) IC 20-22-2-1;**

33 **(2) who is at least fifty-five (55) years of age on or before the**
34 **employee's retirement date;**

35 **(3) who is not eligible for Medicare coverage as prescribed by**
36 **42 U.S.C. 1395 et seq.; and**

37 **(4) who:**

38 **(A) has at least fifteen (15) years of service credit as a**
39 **participant in the retirement fund of which the employee**
40 **is a member on or before the employee's retirement date;**
41 **or**

42 **(B) completes at least ten (10) years of service credit as a**

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1 participant in the retirement fund of which the employee
 2 is a member immediately before the employee's
 3 retirement.

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